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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,869	07/10/2000	Giancarlo Granata	FMCV0113PUS/199-1623	9855

7590                    04/09/2002

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[REDACTED] EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
1771	5

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MFV

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/612,869	GRANATA ET AL.
	Examiner Hai Vo	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 January 2002.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 14-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 July 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                         | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election without traverse of Group II, claims 14-20 in Paper No. 4 is acknowledged.

***Claim Objections***

2. Claims 14-20 are objected to because of the following informalities: In claim 14, line 4, the term "layer" should be inserted after "a non-impregnable". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (US 5,626,382) in view of Kolsky (US 5,274,846) or Gaiser (US 4,270,228). Johnson discloses a molded plastic panel having a localized plastic pad interposed between an aesthetic cover and a rigid substrate (figures 2 and 3). Johnson discloses a plastic pad made of a non-reticulated closed-cell foam impermeable to gas and liquid as a non-impregnable material (column 3, lines 18-19). Johnson fails to teach a plastic pad comprising both non-impregnable and impregnable layers. Kolsky rectifies the deficiencies. Kolsky teaches in an analogous art, a cushion comprising a non-impregnable layer 14 bonded to an impregnable layer 18 (figure 1). Gaiser discloses a hand cover wherein the back

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surface of the hand cover is of non-reticulated foam integrally formed with a pad of reticulated plastic foam (claim 8). One of ordinary skill in the art of automotive interiors would go to the art of cushion or the art of making the hand cover for guidance on how to make a composite pad because there is a teaching in Kolsky or Gaiser of solving a problem associated with air circulation and moisture resistance to retain the natural lightness of the composite pad which is the concern of the present invention. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated an impregnable layer into the plastic pad as taught by Johnson motivated by the desire to permit free air circulation and provide better support and better energy absorption as the cushion receives an impact, the different layers compress differently to absorb and distribute the impact energy.

With regard to claim 16, Kolsy does not specify the pore distribution or the foam density. Gaiser discloses the foam having 10 to 100 pores per inch (column 3, line 45) and being no greater than 10 volume percent (column 4, line 68 et seq.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have altered the range of the pore distribution and the range of the foam density of the impregnable layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It would have been obvious to the skilled artisan to have optimized the range of the pore distribution and the range of the foam density of

the impregnable layer motivated by the desire to permit free air circulation so that the pad readily breaths in use and moisture is expelled rather than retained, thereby retaining its natural lightness.

With regard to claim 17, Johnson discloses the pad being made of polyurethane foam (column 3, lines 18-25).

With regard to claim 18, It is the examiner's position that the article of Johnson as modified by Kolsky or Gaiser is identical to or only slightly different that the claimed article prepared by the method of the claim, because both articles use the same materials, having structural similarity (a localized pad positioned between a rigid substrate and a cover skin). Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289,291 (Fed. Cir. 1983). The Johnson reference as modified by Kolsky or Gaiser reference strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present

invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with Johnson as modified by Kolsky or Gaiser.

With regard to claims 19 and 20, since the article of Johnson as modified by Kolsky or Gaiser is made of the same material and structurally the same as the presently claimed molded panel. It is the examiner's position that the article Johnson as modified by Kolsky or Gaiser would inherently exhibit identical properties, i.e., the Shore A hardness when measured according to ASTM No. D2240.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
April 2, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700